REMARKS

In the October 3, 2003, Office Action, the Examiner objected to claims 4 and 6 because of alleged informalities (paragraph 3), objected to the disclosure because of the lack of a Brief Summary of the Invention (paragraph 4), rejected claims 1-9 under 35 U.S.C. §103(a) as being unpatentable over Fletcher USP 5,740,886 in view of Niemiro USP 5,969,619 (paragraph 6), and rejected claims 1-9 under 35 U.S.C. §103(a) as being unpatentable over Dayson USP 3,334,706 in view of Mitter USP 3,981,619. Applicants respectfully request reconsideration of these objections and rejections.

In regard to the objection to claim 4 set forth in paragraph 3 of the Office Action, the use of "liquid" is the appropriate term. "Fluid" is a broader term, including liquids and gases. In claim 4, reference is made to the level of liquid not gas.

In regard to the objection to claim 6 set forth in paragraph 3 of the Office Action, Applicants have amended claim 6 to correct the typographical error.

In paragraph 4 of the Office Action, the Examiner has objected to the lack of a Brief Summary of the Invention, indicating that appropriate correction is required. Under Tittle 37 of the Code of Federal Regulations, inclusion of a Brief Summary of the Invention is permissive, not mandatory. 37 CFR §1.73 states:

> A brief summary of the invention indicating its nature and substance, which may include a statement of the object of the invention, *should* precede the detailed description. Such summary should, *when set forth*, be commensurate with the invention as claimed and any object recited should be that of the invention as claimed. (Italics added)

The statutes and regulations do not require a brief summary. From the indication in the first sentence of 37 CFR §1.73 that a brief summary *should* precede the detailed description, it is clear that inclusion of a brief summary is permissive, not mandatory. The non-mandatory status of a brief summary is made abundantly clear in the second sentence of 37 CFR §1.73, stating that "[s]uch summary, *when set forth*". "[W]hen set forth" is permissive, not mandatory, language.

In paragraphs 6 and 7 of the Office Action, the Examiner rejected all claims as being obvious in view of the modification of Fletcher by Niemiro or the modification of Dayson with Mitter. The Examiner has cited Fletcher and Dayson as each disclosing an inground lift, with at least one vertically moveable lift engagement structure, at least one vertical post retractably (sic)

into a containment housing defining an internal cavity. Fletcher was filed in 1996 and issued in 1998, while Dayson was filed in 1966 and issued in 1967. Both of these patents illustrate that inground lifts are well known, at least to the scope of those respective disclosure, with Dayson being filed about 36 years prior to the filing of the present application.

The Examiner admits that neither Fletcher nor Dayson disclose an inground lift as claimed in the present application. This admission is significant, as inground lifts are well known in the art, and monitoring the level of water or other liquid in the inground lift has been a need which has been long felt for many years.

The Examiner turns to Niemiro and Mitter to allegedly provide the elements of Applicants' invention which are missing from the cited inground lift prior art. The Examiner states that neither Fletcher nor Dayson disclose a system for controlling the fluid level in the internal cavity. To overcome this deficiency, the Examiner suggests to modify Fletcher and Dayson with Niemiro and Mitter, respectively, asserting that such combinations render all of the claims obvious.

Applicants respectfully disagree. There is no suggestion or motivation in the cited prior to make such a combination. The Examiner indicates that both Niemiro and Mitter disclose systems for controlling fluid level in an internal cavity. Accordingly, Niemiro and Mitter disclose systems that refill a reservoir once a low level condition is indicated. In direct contrast to the problem solved by the present invention relates to the presence of too much liquid-liquid beyond a predetermined level-not to adding liquid to a cavity.

The modification suggested by the Examiner would cause deleterious results to the apparatus of the primary reference. It is well known that liquid should not be introduced into an inground lift cavity.

The problem solved by the present invention is the detection of liquid exceeding a predetermined level in the inground lift cavity. This problem of inground lifts has been around for a long time, as has liquid level detection systems which utilize pressure changes of air flow into a tube having a submerged end. Yet, despite the long coexistence of such detection systems along with inground lifts, the Examiner has not found one instance of an inground lift combined with such a liquid level detection system. The Examiner's statements regarding Fletcher and Dayson proves this point.

Applicants assert that the Examiner has not established even a prima facie case of obviousness with respect to claims 1-9. It is further clear, given the long felt, unresolved need to the detect liquid in inground lifts in view of the failure of persons of ordinary skill in the art to make the combination suggested by the Examiner, that claims 1-9 are not obvious in view of the art relied upon by the Examiner.

In both rejections of paragraphs 6 and 7, the Examiner indicates that Niemiro and Mitter display data indicating fluid level in excess of a predetermined level. However, neither patent makes reference to displaying data. The Examiner specifically mentions controller 40 of Niemiro and references figures 9 and 10, column 6, line 7 through column 7, line 25 of Mitter. Niemiro indicates signal processing controller 40 and 40' interface with the valves to control the addition of liquid, but has no mention of a display. Mitter makes no mention of a controller nor of a display. Neither do Niemiro nor Mitter teach, suggest or disclose a tube which is selectively in fluid communication with the source of pressurized gas.

The Examiner makes a blanket rejection of method claims 6-9, without addressing the specific limitations of these claims. Claim 6 is not rendered obvious by the combinations asserted by the Examiner. Neither of the combinations fairly teach, suggest or disclose a method for controlling an inground lift involving flowing gas through an orifice, and sensing the existence of a predetermined amount of increase in gas pressure. In contrast, the method resulting from the Examiner's combination results in the addition of liquid to the inground lift cavity.

Similarly, the Examiner's non-specific rejections of claims 7-9 are unsupported. None of the references cited by the Examiner have any teaching, suggestion or disclosure regarding selectively flowing gas through the orifice when the at least one vertically moveable lift engagement structure is being lowered, nor inhibiting the lowering of the at least one vertically moveable lift engagement structure in response to the signal generated in response to the existence of a predetermined amount of increase in gas pressure.

Thus, the Examiner's proposed modification of the cited prior art do not render any of claims 1-9 obvious. Applicants assert that the rejections must be withdrawn and the claims allowed.

The Examiner is requested to contact the undersigned attorney to discuss any matters related to the allowance of this application.

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